

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL NO. 6 OF 2002

WITH

O.J.CIVIL APPLICATION NO.40 OF 2002

For Approval and Signature:

THE HONOURABLE MR.JUSTICE R.S.GARG

&

THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgement ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgement ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any order made thereunder ? |
| 5 | Whether it is to be circulated to the civil judge ? |

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PRAFUL M. PATEL - Appellant

Versus

M/S.WONDERWELD ELECTRODES PVT. LTD &9 - Respondent(s)

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Appearance :

MS. AMRITA M. THAKORE for Appellant

None for Respondent No(s).: 1,2,3, 4,5, 6,7,8,9.

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CORAM : THE HONOURABLE MR.JUSTICE R.S.GARG &

THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 16/06/2005

ORAL JUDGMENT

(Per : THE HONOURABLE MR.JUSTICE R.S.GARG)

1.After hearing the learned Counsel for the appellant, we adjourned the case for a short while to await arrival of the learned Counsel for the respondents. Unfortunately, none appears for the respondents and under such circumstances, we proceed *ex parte* against the respondents.

2. Present is an appeal under Section-10(F) of the Companies Act, 1956 whereunder the order dated 18th September, 2001 passed by the Company Law Board, Principal Bench, New Delhi, in C.P.No.28 of 1999, has been impugned on the ground of non-application of mind, illegal approach and perverse findings.
3. The short facts leading to the present appeal are that the appellant and his associates, who were holding 60% of the majority in M/s.Wonderweld Electrodes Pvt. Ltd., a Company registered under the provisions of the Indian Companies Act, 1956 and having its Registered Office at Plot No.902, GIDC Industrial Estate, Ankleshwar, Gujarat, were converted into minority. The allegations were that the appellant and his group were holding majority of 60% shares, but, by a clandestine preferential allotment of additional shares, the appellant and his group was reduced to minority. The appellant moved an application before the Company Law Board under Section 397/398 of the Act with a prayer that the said allotment be cancelled and the position of the parties be restored. It appears that the parties were properly represented before the Board and after hearing the parties, the Board, by its order dated 18th September, 2001, directed the appellant to sell their shareholding to the respondent-Directors and also observed that several persons belonging to the appellant's group be given option to go out of the Company and if such an option is exercised by them, such exercise would be binding upon the respondent-Company. It was, however, also directed that the appellant's group shall sell their shares to the respondents' group on the valuation to be made by an independent valuer.
4. Ms.Amrita Thakore, learned Counsel for the appellant, submits that from perusal of paragraphs 5 and 6, it would clearly appear that the Board had recorded a finding in favour of the appellant and his group; that in an illegal manner, their majority was converted into minority and despite this finding, a premium has been added in favour of those, who have played a fraud by converting the appellant and his group into minority. It is further submitted that the manner, in which the shares were allotted in favour of the minority to bring them into majority, would show that it was all illegal and contrary to law. She submits that in the present set of circumstances, the Board was obliged to cancel the allotment made by the minority in their own favour and the Board could not direct the majority holders, holding the shares, to sell their shares and walk out of the Company.
5. In paragraph-5, the members of the Board have recorded that the Company had taken over the business of a partnership firm, in which the appellant's group held 60% shares and the respondents' group held 30%, while a third party held 10% shares. The said proportion was kept in the shareholding in the Company even after its incorporation in 1988. The Board has also observed that they were not proposing to examine as to whether notices were issued to the appellant and his group or not, but, they proceed to consider the fact that the Company was being managed by those 30% holders and the appellants were properly settled in Coimbatore and were having their own Company and, therefore, under the circumstances, the Board would be justified in directing the majority shareholders to transfer their shares in favour of the minority holders, who, because of further allotment, have become majority shareholders.
6. In paragraph-5, in our considered opinion, the Board was absolutely unjustified in not considering the question of issuance and service of notices to the appellant's group. In a case where a General Body Meeting is convened for the issuance/allotment of preferential/right shares, then, every person who holds shares under the Act is entitled to a notice. In a given case where the Board of Directors holds that every person, holding the shares, shall receive certain shares in accordance with their proportion and ratio, then, the question of issuance of notice may not be that important because everybody gets the benefit flowing from the resolution passed by the Board of Directors, but, the situation would be

altogether different in a case where the notices are not issued and the minority people appear on the scene, take a decision in their own favour, convert themselves into majority and try to have a walk-over against the absentees.

7. In the present case, the question of issuance of notice was of prime importance, which, unfortunately, has not been considered by the Board.

8. The Board, in our considered opinion, was again unjustified in observing that because the Company was being run and managed by the persons having 30% of the holding, the appellant and his group should be asked to walk out. In a case where majority of shareholders repose confidence in particular persons, then, they may or may not take active part in the business or management of the Company. The law nowhere provides that a person in whom confidence is reposed can play a fraud and must also be given benefit. Present is a case where the minority, in which absolute confidence was reposed by the majority, has played a fraud against the majority and tried to have walk-over even without informing them that the matter was required to be considered in the Board's meeting.

9. The Board was also unjustified in observing that the majority shareholders are to be virtually blamed for losing the majority because they were not attending the meetings or were not taking active part in the management. In our considered opinion, this approach of the Board is absolutely perverse, contrary to law and common understanding of the people and faith reposed by a group of persons in another group of persons.

10 Ordinarily, in a given case, where the majority makes a complaint and the circumstances so require, the golden rule is that the minority is asked to sell their shares to the majority and walk-out of the management, but, in the present case, the Board, taking an absolute perverse approach, has observed that because the Company is managed by the minority group, the majority should walk-out. We fail to appreciate the said approach. We have already observed that one cannot be condemned for reposing confidence in another and premium cannot be added to a wrong. The law says that a person in whom confidence is reposed is virtually a trustee and caretaker, from whom no wrong is expected. In the present case, the persons, who are holding 30% shareholding, in fact, in a clandestine manner, called the meeting, passed a resolution, came into majority and converted the majority of others into minority. The approach of the Board that they were directing the majority group, in the interest of the Company, to sell their shareholding to the minority, cannot be approved.

11 The order dated 18th September, 2001 cannot be approved or upheld. It deserves to be and is accordingly quashed.

12 Taking into consideration the totality of the circumstances, we are of the opinion that the appellant's application filed under Sections 397 and 398 of the Act deserves to be allowed. It is accordingly allowed. It is hereby directed that the allotment of shares made in the meeting dated 5th September, 1998 deserves to be cancelled and accordingly, the allotment so made is cancelled. The parties are brought back/relegated to their original position. No order as to costs.

13 In view of disposal of the main appeal, O.J. Civil Application No.40 of 2002 stands disposed of accordingly. Rule is discharged accordingly.

(R.S.Garg, J.)

(Ravi R.Tripathi, J.)